

	)	
Investigation by the Department of Telecommunications	)	
and Energy on its own motion, pursuant to G.L. c. 164,	)	
§§ 1E, 76 and 93, into Boston Edison Company, Cambridge)	)	
Electric Light Company and Commonwealth Electric	)	
Company, d/b/a NSTAR Electric's service quality filings,	)	D.T.E. 01-71A
including but not limited to, their service quality filings	)	
submitted in response to Service Quality Standards for	)	
Electric Distribution Companies and Local Gas	)	
Distribution Companies, D.T.E. 99-84	)	
	)	

February 5, 2002

## TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION</b> .....	<b>1</b>
<b>A.</b>	<b>Statement Of The Case</b> .....	<b>2</b>
<b>II.</b>	<b>ARGUMENT</b> .....	<b>4</b>
<b>A.</b>	<b>The Department Should Assess The Maximum Statutory SQ Penalty Permissible Under The Law Against NSTAR.</b> .....	<b>4</b>
<b>B.</b>	<b>The Company’s Direct Payments To Customers Are Not Penalties And Should Not Offset Any Penalty Assessment By The Department.</b> .....	<b>6</b>
<b>C.</b>	<b>There Is A Lack Of Evidence To Support The Company’s Service Quality Benchmarks</b> .....	<b>9</b>
<b>D.</b>	<b>The Department Should Order The Company To Conduct An Independent Audit.</b> .....	<b>10</b>
<b>III.</b>	<b>CONCLUSION</b> .....	<b>11</b>

	)	
Investigation by the Department of Telecommunications	)	
and Energy on its own motion, pursuant to G.L. c. 164,	)	
§§ 1E, 76 and 93, into Boston Edison Company, Cambridge)	)	
Electric Light Company and Commonwealth Electric	)	
Company, d/b/a NSTAR Electric's service quality filings,	)	D.T.E. 01-71A
including but not limited to, their service quality filings	)	
submitted in response to Service Quality Standards for	)	
Electric Distribution Companies and Local Gas	)	
Distribution Companies, D.T.E. 99-84	)	
	)	

## I. INTRODUCTION

The Attorney General and DOER have reviewed the SQ Plan and the related supporting

evidence. The Attorney General and DOER have also reviewed the System Reliability Reports in a related docket, D.T.E. 01-65, of which the Department has taken administrative notice. The Attorney General and DOER request that the Department take administrative notice of all the documents and materials filed in the D.T.E. 01-65 docket and that the Department incorporate by reference in this proceeding the documents and materials filed in D.T.E. 01-65, including the Company's System Reliability Reports.<sup>1</sup>

A review of the evidence in this docket, and the documents and related materials in D.T.E. 01-65, clearly indicates that the Company has failed to provide adequate service since its merger in 1999 and, therefore, the Department should assess the maximum statutory service quality penalty ("SQ Penalty") against Boston Edison Company ("BECO") of \$22.5 million as set forth in the Joint Comments of the Attorney General and DOER filed January 30, 2002, in D.T.E. 01-65. *See also*, Exh. NSTAR-3; fn. 6, *infra*.

#### **A. Statement Of The Case**

The Company experienced widespread outages, during the summer of 2001, leaving thousands of its customers without power for extended periods. Exh. NSTAR-2; NSTAR-3; NSTAR System Reliability Reports; Tr. Town Public Hearings; Joint Comments of AG and DOER; D.T.E. 01-65. These outages prompted the Department to open an investigation on August 24, 2001, to examine the Company's system reliability and related outage problems. *See Investigation by the Department of Telecommunications and Energy on its own motion into the service quality of Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company, d/b/a*

---

<sup>1</sup> The Department noted in its Procedural Order that "[t]he Department takes administrative notice in this present docket of the October 29, 2001 Self-Assessment Reports filed in D.T.E. 01-65." Procedural Order, p. 2 (2001).

*NSTAR Electric*, D.T.E. 01-65. On September 7, 2001, the Department opened a proceeding, *Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G.L. c. 164, §§ 1E, 76 and 93, into the electric distribution companies' quality of electric services, including but not limited to, their service quality filings submitted in response to Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies*, D.T.E. 99-84, D.T.E. 01-71, to investigate the quality of electric service provided by the electric distribution companies. Thereafter, on or about November 2, 2001, the Department opened a related proceeding, *Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G.L. c. 164, §§ 1E, 76 and 93, into Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company, d/b/a NSTAR Electric's service quality filings, including but not limited to, their service quality filings submitted in response to Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies*, D.T.E. 99-84, D.T.E. 01--71A<sup>2</sup>, to examine NSTAR's SQ Plan and to determine whether the Company's SQ Plan and performance complied with the SQ Standards since the Company's merger in September of 1999, and, if not, to determine whether the Department should impose penalties against the Company.

On October 29, 2001, the Company filed its SQ Plan assessing its compliance with the SQ Standards established by the Department in a related docket, D.T.E. 99-84.<sup>3</sup> The Company also assessed its compliance with the SQ Standards since its merger, as investigated in a related docket,

---

<sup>2</sup> Docket D.T.E. 01-71A pertains exclusively to NSTAR while D.T.E. 01-71 pertains to all gas and electric distribution companies.

<sup>3</sup> On June 29, 2001, the Department issued its final Order and related Guidelines establishing SQ Standards with which all electric and gas distribution companies must comply. The Department required that SQ Standards be included in performance-based regulation ("PBR") plans filed by electric and gas distribution companies and that PBR plans be filed with every company's rate case. Finally, the Department directed every electric and gas distribution company that did not expect to file a rate case to file a SQ plan within four months of the date of the Order.

D.T.E. 99-19.<sup>4</sup> The Company proposes that the Department assess a total combined penalty in the amount of \$3.2 million<sup>5</sup> in connection with its failure to meet SQ Standards for the periods September 1, 1999 through August 31, 2000 and September 1, 2000 through August 31, 2001. The Company further proposes that the Department reduce the total combined penalty of \$3.2 million by \$1 million to account for the payments made to customers in connection with damage claims arising from outages during the summer of 2001.

## II. ARGUMENT

### A. The Department should assess the maximum statutory SQ Penalty permissible under the law against NSTAR.

Since the Company's merger in 1999, NSTAR has provided problematic service marred by widespread outages for its customers, particularly those in the Boston Edison service territory. *See generally* Exh. NSTAR-2; NSTAR-3; NSTAR System Reliability Reports; Tr. Town Public Hearings; Joint Comments of AG and DOER; D.T.E. 01-65. The Company has acknowledged that its service has been deficient. Exh. NSTAR-2, p.7; NSTAR-3, Appendix B, pp. 1-4; NSTAR System Reliability Reports. Additionally, numerous public officials, individual ratepayers, small business

---

<sup>4</sup>On February 1, 1999, Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company, and Commonwealth Gas Company filed a petition, docketed as D.T.E. 99-19, for approval of a rate plan filed in conjunction with the merger of the companies' parent companies--- BEC Energy and Commonwealth Energy System—which created NSTAR. The rate plan proposed by NSTAR included a service quality plan which contained benchmarks on historical performance of the merged companies to “allow the Department to determine whether there has been a degradation in the companies’ service quality as a result of the merger.” Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company, and Commonwealth Gas Company, D.T.E. 99-19, p. 94-96 (1999). On July 27, 1999, the Department approved the rate plan filed by NSTAR. In the service quality plan contained in the approved rate plan, NSTAR agreed to report to the Department on an annual basis to demonstrate that the historical level of service was being maintained following the merger. In approving NSTAR’s service quality plan, the Department expressed its intention to open a generic investigation on issues relating to service quality and service quality plans. *Id.* at 101-102. The generic investigation was docketed as D.T.E. 99-84.

<sup>5</sup> In Exh. NSTAR-2, the Company initially calculated the total combined penalty to be approximately \$3.9 million but revised that figure as depicted in Exh. NSTAR-3.

owners, and spokespersons for major corporations criticized the service provided by the Company. *See, e.g.,* Tr. Stoneham Public Hearing, pp. 28-32; Tr. Medfield Public Hearing, pp. 22-23; Tr. Hyannis Public Hearing, pp. 33-36. Furthermore, the Company's self-assessment reports filed in D.T.E. 01-65 show that it saved millions of dollars by decreasing capital spending on the distribution system, allowing the Company to increase its earnings while customers paid the price with blackouts.

"The Department previously has found that a penalty provision is an important and necessary component of a service quality plan in that it provides companies with a direct financial incentive motivation to meet or exceed established performance standards." *Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and Commonwealth Gas Company*, D.T.E. 99-19, p. 106 citing *NIPSCO-Bay State Acquisition*, D.T.E. 98-31 at 31-32 (1998); *Boston Gas Company*, D.P.U. 96-50-C at 71-72 (1997); *Boston Gas Company*, D.P.U. 96-50 (Phase One) at 310 (1996); *NYNEX Price Cap*, D.P.U. 94-50, at 235-238 (1995). As the evidence also indicates in this docket, the best interests of customers are not aligned with the financial interests of shareholders so the Company lacks appropriate motivation to maintain service quality.

The Department has not yet to made a final determination of penalties to be assessed under the service quality provisions of the merger plan. D.T.E. 99-19, p. 107. The Attorney General and DOER request that the Department impose the maximum statutory service quality penalty to ensure that NSTAR has the direct financial incentive necessary to prevent a reoccurrence of the outages experienced by customers. As more fully set forth in the Joint Comments of the Attorney General and DOER in docket D.T.E. 01-65, the Attorney General and DOER recommend the Department

levy the maximum statutory service quality penalty allowable of \$22.5 million<sup>6</sup> for the period September 1, 1999 to August 31, 2001, and request that this penalty be credited to customers through a reduction in distribution rates.

**B. The Company's Direct Payments To Customers Are Not Penalties And Should Not Offset Any Penalty Assessment By The Department.**

In the summer of 2001, numerous NSTAR customers, particularly those in the Boston Edison service territory, received service marred by outages. The Company acknowledged that the "level of service interruptions experienced by the customers during this reporting period resulted in significant customer inconvenience." Exh. NSTAR-2, p. 7. To address the complaints and losses of its customers, and in response to the concerns of local public officials and the media, NSTAR initiated a voluntary claims program for its customers. *Id.* at 7. Customers who could demonstrate that they had incurred a loss in relation to the outages would receive a reimbursement payment. *Id.*

---

<sup>6</sup> Maximum Penalty Amount according to the Company's own calculation. See Exh. NSTAR-3, Attachment B, p. 1. The maximum two percent of revenues penalty for NSTAR can be calculated from the information provided by the Company in D.T.E. 01-71A, Exhibit NSTAR-3, Appendix B, pp. 1-4:

	Penalties For 12 Months Ended <u>8/31/2000</u>	Penalties For 12 Months Ended <u>8 /31/2001</u>	<u>Total</u>
Boston Edison	\$10,806,310	\$11,756,385	\$22,562,695
Commonwealth Electric	3,148,439	3,216,491	6,364,930
Cambridge Electric	753,442	658,577	1,412,019
Commonwealth Gas	<u>3,160,259</u>	<u>3,205,288</u>	<u>6,365,547</u>
 TOTAL COMPANY	 <u>\$17,868,450</u>	 <u>\$18,836,741</u>	 <u>\$36,705,191</u>

Based upon the management audit requested in D.T.E. 01-65, it may be appropriate to increase the penalty to reflect findings regarding the other companies.



at 7. According to NSTAR, the Company paid a total of 2,551 claims in the amount of \$752,632.98 as of December 31, 2001. Exh. DTE-1-5. NSTAR also reports that it has established cash reserves in the amount of \$220,661.00 for an additional 209 claims that remain outstanding pending further investigation and review by the Company to substantiate the claims. Exh. DTE-1-5. The Company seeks to offset the direct payments made to customers against any total SQ Standards penalties incurred. The Department, however, should not allow the Company to offset direct payments for **damages** against any total penalties incurred for failure to meet the SQ Standards.

First, the Company has stated on several occasions that it does not consider the payments to be penalties. Tr., pp. 88-90 Even so, the Company reasons that an offset is appropriate because although “[i]t’s a voluntary payment...its intent is the same as that of the regulations that require a penalty from the company for not meeting its reliability benchmarks.” Tr., p. 90. The Company’s flawed reasoning should not prevail. The Company made a business decision to reimburse customers in order to benefit the Company and its customer and public relations, rather than to penalize the Company. Further, if as the Company has stated, the payments are not penalties, then they should not be treated as penalties here.<sup>7</sup>

Second, the Company acted on the matter without authority from the Department. The Company never sought or otherwise obtained permission or approval from the Department to implement its voluntary claims payment program.<sup>8</sup> Tr., p. 69-70. Further, there was no Department

---

<sup>7</sup> During the evidentiary hearing, the Department inquired into or otherwise alluded to the absurd possibility of the Company being owed a refund where its payments exceeded total penalties incurred. Tr., p. 106. The extreme and skewed result of the Company possibly being owed a refund where its payments exceed its penalties demonstrates that there is not and should not be a correlation between the payments made to customers and the and penalties owed for failure to meet SQ Standards.

<sup>8</sup> In its Order of June 29, 2001 in D.T.E. 99-84, the Department authorized direct payments to customers only in the limited circumstance relating to the Customer Service Guarantees standard where a company fails to keep a service

oversight of the notice provided by the Company to the customers affected by outages, the manner in which the Company evaluated claims submitted by customers, or in the actual payment of the claims. Department oversight may have avoided the errors, inconsistencies, and discrepancies in the Company's reimbursement program.<sup>9</sup> See, e.g., Exh. NSTAR-2 ; Exh. DTE-1-5; Exh. AG-1-10; Exh. DTE-1-5, attachment, p. 53-54; Tr., pp. 71-82. Because of these errors, inconsistencies and discrepancies in the manner in which the Company implemented the program, the Department should not allow the Company to offset its payments against the penalties.

Third, the Company's business decision to appease its customers, local public officials and the media had little to do with getting an early start on paying SQ Standards penalties.<sup>10</sup> The Company should not now be allowed to reclassify those payments as SQ Standards penalties and thus reap double benefits from the circumstance. Any right of customers to receive compensation

---

appointment or fails to notify customers of planned service interruptions. Order, p.8.

<sup>9</sup> It is not clear from the Company's responses how much it actually paid out to its customers. NSTAR contends both that it has paid "over \$1 million" to its customers and that it has paid or otherwise established reserves to pay a total of \$946,293.98 to customers---a discrepancy of approximately \$54,000. See Exh. NSTAR-2 ; Exh. DTE-1-5. Also, some of the payments that the Company seeks to offset as a penalty should be excluded since they fall outside of the period ending August 31, 2001. Exh. AG-1-10; Exh. DTE-1-5, attachment, p. 53-54 (where payments were made for October and November incident dates). Further, record evidence casts doubt on whether the Company in fact **paid** the reimbursement payments to the customers or whether the Company's liability carrier actually paid the claims or reimbursed the Company for claims that the Company paid out directly. See Exh. AG-1-11; Tr., p. 81. Finally, the Company testified that the Company rejected various claims filed by customers but was unable to clarify how many claims it rejected, why it rejected those claims, and the process used in evaluating the claims. Tr., p. 72-74, 78-81.

On the issue of public notice to its customers regarding the right to file claims for reimbursement, the Company testified that its notice to customers entailed working with unnamed local officials to notify affected customers of their right to file a claim. Tr., p.76. The Company also testified that it was "not sure that there were direct communications using the print media or the radio and TV media to announce the availability of these claims processes." *Id.* at 76. The Company further testified that it set up claims centers throughout the affected areas to invite the customers to come to centers to get claims forms and get explanations on filing a claims, however, the Company was unable to specifically identify where those claims centers were and likewise was unable to confirm whether claims centers were set up in the towns of Stoneham or Medfield. *Id.* at 76-77. The notice provided by the Company was inadequate and numerous customers who otherwise were entitled to file claims never received an opportunity to do so. See Tr., p. 71, 75-82

<sup>10</sup> The Company seemingly reduced its exposure to general liability through this reimbursement and/or settlement arrangements. See Exh. AG-1-11. Further, payments to the customers diffused the tension in the political and mass media arena regarding the matter.

and/or reimbursement from the Company for pecuniary losses incurred from substandard service is separate and apart from the obligation of the Company to pay a penalty where it fails to meet certain SQ Standards relating to the provision of reliable service. Indeed, the Department inquired into whether the money paid to customers was separate from a penalty and the Company acknowledged that it was. Tr., p. 103-104. Accordingly, the Department should not allow the Company to offset its payments against the penalties.

**C. There Is A Lack Of Evidence To Support The Company's Service Quality Benchmarks.**

The Company has not met its burden to demonstrate that it has properly calculated its service quality benchmarks. It has also failed to demonstrate that it has properly calculated any penalties for failing to meet the SQ Standards. Any penalty calculation based upon unsupported service quality benchmarks is unreliable.

The Company does not have records that it is required to retain. *See, e.g.*, Exh. AG-1-21(a). To date, the Company has not provided an explanation regarding why it has lost or otherwise failed to keep records relating to benchmark data. The Company has failed or otherwise refused to provide information and records requested by the Attorney General or has otherwise failed to provide portions of the requested information and records.<sup>11</sup> *See* Tr., p. 16; *see also* Exh. AG-1-3; AG-1-5, AG-1-6; AG-1-7; AG-1-10; AG-1-11; AG-1-19 and AG-1-20. Additionally, the Company's expert witness, Mr. Henry C. LaMontagne, demonstrated during the evidentiary hearing held on January 22, 2002, that the Company was confused about the data in its SQ Plan; unsure about the calculation

---

<sup>11</sup> The Company failed to answer and provide records for the following Information Requests of the Attorney General: AG1-9; AG 1-12; AG 1-13; AG 1-15; AG 1-17; AG 1-18; AG 1-22; and AG 1-23. The Attorney General filed a Motion to Compel Discovery with the Department on January 25, 2002.

of that data; and, finally, unable to provide answers to numerous questions regarding the Company's operations, procedures, personnel, data and calculations. *See, e.g.,* Tr., pp. 26, 30, 33, 41-42, 46, 48, 51, 56, 60, 71, 77-78, 81, 86, 97, 111-112, 119, 126-127. The Department should issue a finding that the Company has failed to meet its burden with respect to its benchmark calculations. In addition to the arguments in D.T.E. 01-65, the failure of the Company to demonstrate that it has properly calculated its service quality benchmarks provides additional grounds for the Department to impose the maximum statutory service quality penalty against the Company.

**D. The Department Should Order The Company To Conduct An Independent Audit.**

Department should require the Company to conduct an independent audit of its service quality benchmark and compliance data in order to verify compliance with the Department's standards in addition to the scope of the audit requested in D.T.E. 01-65.<sup>12</sup> The Company is missing, or otherwise failing to keep, records that it is required to retain. Exh. AG-1-21(a). Further, the Company failed or otherwise refused to provide information and records requested by the Attorney General or has provided only portions of the requested information and records. *See* Tr., p. 16; *see also* Exh. AG-1-3; AG-1-5, AG-1-6; AG -1-7; AG-1-10; AG-1-11; AG-1-19 and AG-1-20. Throughout the evidentiary hearing, the Company's witness, Mr. Henry C. LaMontagne, either did not know or was not sure of the answer to numerous questions about the Company's operations, procedures, personnel, data and calculations. Tr., pp. 26, 30, 33, 41-42, 46, 48, 51, 56, 60, 71, 77-78, 81, 86, 97, 111-112, 119, 126-127. Indeed, with respect to certain figures listed in the

---

<sup>12</sup> General Laws c. 164, § 1E(b) requires a Department determination concerning whether NSTAR has engaged in labor displacement or reductions below staffing levels in existence on November 1, 1997, that were not part of a collective bargaining agreement or agreements between the company and the applicable organization or organizations representing such workers.

Company's SQ Plan, the Company's witness was unable to explain or calculate the figures. *Id.*, p. 60, 119. Finally, various errors, irregularities and discrepancies exist with respect to the figures and data submitted by the Company and the methodology and procedures undertaken by the Company. *See, e.g.*, Exh. NSTAR-2 ; Exh. DTE-1-5; Exh. AG-1-10; Exh. DTE-1-5, attachment, p. 53-54; AG-1-11; Tr., p. 81. Because of these business irregularities, the Department should order an independent audit of NSTAR's service quality accounting in addition to the scope of the audit requested in D.T.E. 01-65.<sup>13</sup> "The audit should produce an independent, objective, and comprehensive overview" of the Company's service quality accounting. *New England Telephone*, D.P.U. 86-33-G, p. 141 (1989).

### **III. CONCLUSION**

For all of these reasons, the Attorney General and DOER request that the Department issue an Order (1) assessing the maximum statutory SQ Penalty of \$ 22.5 million against BECO that is permissible under the law against the Company; (2) rejecting any penalty offset by the Company with respect to the payments reimbursed to customers; (3) holding that the Company has failed to meet its burden in demonstrating that it has properly calculated its service quality benchmarks; and

---

<sup>13</sup> "Such an independent audit could free the results from the kind of biases inherent in the Company's own data." *New England Telephone*, D.P.U. 86-33-G, p. 141. Furthermore, the audit should not be performed by a firm which has significant business with NSTAR.

(4) requiring that the Company conduct an independent audit of the Company's service quality accounting in addition to the scope of the audit requested in D.T.E. 01-65.

RESPECTFULLY SUBMITTED,

TOM REILLY  
ATTORNEY GENERAL

By: \_\_\_\_\_  
Wilner Borgella, Jr.  
Assistant Attorney General  
Utilities Division  
Public Protection Bureau  
200 Portland Street  
Boston, MA 02114  
(617) 727-2200

By: \_\_\_\_\_  
Carol R. Wasserman  
Deputy General Counsel  
Division of Energy Resources  
70 Franklin Street  
Boston, MA 02210

Dated: February 5, 2002